

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20054**

In the Matter of:]	
]	CC Docket 02-6
MOISD CONSORTIUM]	
]	Funding Request Nos: 1699033494, 1699033501
Request for Review by Decision by the]	
Administrator of Universal Service]	Form 471 Application No. 161018359
Administrative Company]	

EX PARTE SUBMISSION

The MOISD Consortium (“the Consortium”), by and through its attorney, submits this **EX PARTE SUBMISSION** to address certain inaccurate statements made by Charter Communications, Inc. (“Charter”), in its Response that was filed with the FCC on August 31, 2018. While Charter “agrees that the Consortium should not be required to reimburse amounts disbursed” by USAC in connection with the above-referenced FCC Form 471 (161018359) (the “March Application”),¹ Charter argues that the “Consortium’s efforts to blame Charter for the events...are misplaced.”²

As noted by Charter, the Consortium’s Request For Review, filed August 21, 2018 (the “Request”), explained that the June 22, 2018, decision by the Administrator of the Universal Service Administrative Company (“USAC”), which denied the Consortium’s appeal of the “Commitment Adjustment Letter” for Funding Year 2016 dated March 27, 2018, incorrectly placed the responsibility for repayment of the disbursed funds on the Consortium, rather than Charter, which served as its vendor.

¹ *Response to Request for Review*, Charter Communications, Inc., pg. 5 (the “*Response*”).

² *Response*, pg. 2.

In the Request, the Consortium explained that Charter had prepared an inaccurate contract for the Consortium to sign in March 2016, and that this error led to the need for the Consortium to cancel the March Application on May 3, 2016, and resubmit a new application (161037183) (the “May Application”). Subsequent errors by Charter and USAC led to the disbursement of funds under the cancelled March Application, and, due to the passage of time, Charter and USAC were unable to resolve these errors.

While Charter agrees that the Consortium should not be required to return any funds to USAC,³ Charter appears to be placing responsibility on the Consortium by noting that the pending matter arose from “misunderstandings and administrative errors occasioned by the Consortium’s cancellation of its initial FRNs and substitution of new ones without clear communication of that change.”⁴

Out of an abundance of caution, the Consortium is submitting this *Ex Parte* supplement to provide additional information regarding the exchange of communications between Charter and the Consortium staff between April 26 and May 3, 2016, i.e., the period of time in which:

- (i) the Consortium requested that Charter review the terms and conditions of the contract signed in March 2016 to ensure they complied with USAC rules,
- (ii) Charter acknowledged that it had made an error when preparing the contract that was signed in March 2016, and
- (iii) Charter identified the problem with the March 2016 contract, and prepared a new agreement for the Consortium to sign.

³ *Response*, pg. 5 (“Charter agrees that the Consortium should not be required to reimburse amounts disbursed in connection with funding requests that were cancelled.”).

⁴ *Response*, pg. 2.

In particular, Exhibit A contains a summary of the email correspondence between Consortium and Charter employees, along with the original emails. What should be clear from the email exchanges provided in Exhibit A is that Charter's Todd W. Dalson both (i) acknowledged the error associated with the March 2016 contract (April 26, 2016, 3:10 pm email) and (ii) accepted sole responsibility for the error with the March 2016 contract (April 27, 2016, 12:16 pm email). Based on the email correspondence, it is clear that the Consortium provided "clear communication" to Charter regarding the need for the revised contract on April 26, 2016, and the parties actively worked together to execute a new agreement and submit the revised Form 471 application by May 3, 2018.

As shown in Exhibit A, under no circumstances is it accurate to say, as Charter asserts in its Response, that the Consortium failed to provide "clear communication" to Charter regarding the need for a revised contract. In fact, Charter subsequently billed the incorrect FRNs, even after the Consortium timely responded to Charter's request for clarification on May 23, 2016.⁵ If Charter believes that it received unclear communications, it must look within its own organization to determine why the communication among its employees failed, and take into consideration that it followed a disbursement procedure that Charter had selected based solely on its own preference.⁶

⁵ *Request for Review, Exhibit Three*, Email correspondence from Jermaine Atkins (Charter) and Brian Pickett (MOISD Consortium), dated May 23, 2016, 5:02pm.

⁶ *See also Request for Review, Exhibit Five*, Email correspondence from Ebony Gerdine-Hatley (Charter) to Missy Studley (Elite Fund), May 22, 2018, 6:19pm (wherein Charter acknowledges that it did not have an SPI Election Form for Funding Year 2016 from the Consortium) and Email correspondence from Ebony Gerdine-Hatley (Charter) to Missy Studley (Elite Fund) and Janelle (Elite Fund) ("If we do not received [sic] a discount election we'll then decide, choosing the preferred SPI method.").

The Consortium would have preferred if it had not been necessary to submit this detailed email correspondence, so that the Consortium could avoid causing Charter or its employees any additional embarrassment. However, because Charter's Response argued that "the Consortium's efforts to blame Charter for the events...are misplaced," and asserted that the Consortium failed to provide "clear communication" to Charter regarding the revised May Application, the Consortium believes it necessary to provide those communications involving Charter's employees, in which it accepted full responsibility for the error which lead directly to the need to cancel the March Application.⁷ Without this information, the Consortium is concerned that the FCC may affirm the USAC decision, and require the Consortium to repay the disbursed funds when resolving the Request for Review.⁸

Based on the information provided in the Request and this supplement, it is clear that the Consortium must not be held responsible for the combined errors of Charter and USAC that led to the disbursement of funds under the cancelled Application. Charter has acknowledged its errors and accepted responsibility for creating the circumstances by which (i) the Consortium was required to cancel one application and submit a new application, and (ii) Charter billed the cancelled FRNs.⁹

⁷ Response, pg. 2. See *Exhibit One*, Email correspondence from Todd W. Dalson (Charter) to Brian Picket (MOISD Consortium), dated April 27, 2016, 12:16pm ("I know this is a pain and I also know it was caused on our end. Mine Specifically because it is my responsibility to keep up with the changes on anything K12.. Just in case I need to modify I may need to make the agreement look like this. It is a bad inconvenience on your end because you already signed an agreement that I myself put in front of you. If we have to go this route. My bad and it is on me. I usually don't make stupid mistakes like this and if I did it twice it is embarrassing.").

⁸ See *Achieve Telecom Network of MA*, 30 FCC Rcd 3653, 3655, nt. 11 (WCB 2015) (citing *Request for Review of the Decision by the Universal Service Administrator by Bell South Telecommunications, Inc. and Union Parish School Board*, Order, 27 FCC Rcd 11208 (WCB 2012)).

⁹ See *Request for Review, Exhibit Four*, Email Correspondence from Ebony Gerdine-Hatley (Charter) to Missy Studley (Elite Fund), dated February 27, 2018, 10:26am ("I do have a clear understanding of what

Not only did USAC ignore this information, as the Consortium explained in the Request, USAC compounded the errors by releasing two decisions that failed to meet the threshold requirement for reasoned decision-making. As such, the MOISD Consortium requests that the Commission set aside the USAC Denial issued on June 22, 2018, and direct USAC to immediately cease collection efforts against it.

If the Commission ultimately determines that the disbursed funds should be recovered, then the Consortium respectfully urges the Commission to pursue recovery from the parties actually responsible for the erroneous billing, Charter Communications and Charter Fiberlink CC VIII, LLC.

Respectfully submitted,

MOISD CONSORTIUM

By: 

Lee G. Petro
**PILLSBURY WINTHROP
SHAW PITTMAN LLC**
1200 Seventeenth Street NW
Washington, DC 20005-1209
(202) 663-8113

Its Counsel

September 11, 2018

has happened. No additional information is needed from you at this point. I'm going to start the process of sending the funds back to USAC so that we can apply them to the correct FRN.").

EXHIBIT A

Date	From	To	Message
April 26, 2016 11:39 AM	Brian Pickett - MOISD	Todd W. Dalson - Charter	Hey Todd, Joe thinks you screwed up our WAN renewal. Please make sure it's a real renewal and not a reconfiguration. Joe thinks the EPLAN will not work for us. Brian
April 26, 2016 12:06 PM	Todd W. Dalson - Charter	Brian Pickett - MOISD	Let me dig on that Brian. Entirely possible. In the past it never mattered a WAN was a WAN. I will investigate and fix if it need to be.
April 26, 2016 12:16 AM	Brian Pickett - MOISD	Todd W. Dalson - Charter	Thanks Todd, To me, a renewal is a renewal. No change whatsoever. Please tell me that's correct. Thanks, Brian
April 26, 2016 3:10 PM	Todd W. Dalson - Charter	Brian Pickett - MOISD	Hi Brian Marc is in Kalamazoo and will do a deep dive when he gets back. In years past a WAN contract was a WAN contract. USAC made a change this year that I didn't become aware of until last week. My bad and that is on my shoulders. I am having Heather prepare the EPL by the book as an alternative if Marc says we need to go that route. This one didn't blow back at me like Big Rapids did so I was (am) hoping we are ok. If the other is needed I will have to move numbers around but I won't increase the bottom line. I tend to bid out Multi Point to Multi point because it saves money. My heart is in the right place. My head is out to lunch. If you can hold tight until I get to the deep dive. Sorry about making this an adventure.
April 26, 2016 3:30 AM	Brian Pickett - MOISD	Todd W. Dalson - Charter	Thanks Todd No problem. I still say a renewal is a renewal. If things broke on July 1 I would be very surprised. Later, Brian

Date	From	To	Message
April 26, 2016	Todd W. Dalson - Charter	Brian Pickett - MOISD	<p>I agree with you. But USAC re invents the wheel. This should be nothing more than moving paper if everything stays the same on the bandwidth which it did.</p> <p>Ultimately Brian whatever turns out here. I own it and it is my responsibility to stay up to date. I will be the first one to admit that I do not read every Email Update I get from USAC.</p> <p>If it ends up like Big Rapids I will probably have to re submit with 12 end points (6 at MOISD and one at the other six sites). They will not be \$832 x 12.</p> <p>I also let Bob Rice know.</p>
April 27, 2016 12:16 PM	Todd W. Dalson - Charter	Brian Pickett - MOISD	<p>Hi Brian</p> <p>Haven't been able to reach Marc. I know this is a pain and I also know it was caused on our end.</p> <p>Mine Specifically because it is my responsibility to keep up with the changes on anything K12..</p> <p>Just in case I need to modify I may need to make the agreement look like this.</p> <p>It is a bad inconvenience on your end because you already signed an agreement that I myself put in front of you.</p> <p>If we have to go this route. My bad and it is on me. I usually don't make stupid mistakes like this and if I did it twice it is embarrassing.</p> <p>I just want you to have this in case.</p>
April 27, 2016 12:44 PM	Brian Pickett - MOISD	Todd W. Dalson - Charter	<p>Todd,</p> <p>If our renewal contract needs to be voided, we need the new contract asap.</p> <p>Please,</p> <p>Thanks,</p> <p>Brian</p>
April 27, 2016	Todd W. Dalson - Charter	Brian Pickett - MOISD	<p>Hi Brian</p> <p>It is in motion. My boss is on alert for approval when everything is entered which is being worked on right now. The contract people are in Denver so I will be online past COB. This is at the top of my list.</p>
April 29, 2016	Todd W. Dalson - Charter	Brian Pickett - MOISD	<p>Hi Brian</p> <p>I just need my VP to sign off. Hopefully she isn't travelling and we will be done today. If she is, we shouldn't go past Monday morning.</p> <p>Again apologies for the inconvenience.. I'm in front of the computer all day today and most of the weekend.</p>
April 29, 2016	Todd W. Dalson - Charter	Brian Pickett - MOISD	<p>Brian</p> <p>I should have the replacement this afternoon</p>

Date	From	To	Message
April 29, 2016	Todd W. Dalson - Charter	Brian Pickett - MOISD	Hello Brian Here is what it should look like. I'm sorry again about making you go through this a second time.
May 2, 2016 11:27 AM	Todd W. Dalson - Charter	Brian Pickett - MOISD	Hi Brian I am taking the better safe than sorry approach here. Sometimes when I email files remotely they don't transfer. So I am sending this again from my office. If you got it twice, sorry about the duplication. If this is the first copy you are seeing, I am glad I did it.
May 2, 2016 12:19 PM	Brian Pickett - MOISD	Todd W. Dalson - Charter	Hi Todd, Please see page two. Each location says "This circuit will be billed at (location)" Please tell me that the ISD will still get the bill and not our districts. The signed service order is attached. Brian
May 2, 2016 11:27 AM	Todd W. Dalson - Charter	Brian Pickett - MOISD Heather L. Gervais - Charter	Hi Brian Adding Heather. H, they will bill just like they currently do correct? With the ISD being billed?
May 2, 2016 1:42 PM	Heather L. Gervais - Charter	Todd W. Dalson - Charter Brian Pickett - MOISD	Yes, that is correct. All endpoints (Z side) will have those amounts billed in the school name, but all will bill back to the MOISD master bill like they do now. Thanks, Heather
May 2, 2016 12:19 PM	Brian Pickett - MOISD	Heather L. Gervais - Charter Todd W. Dalson - Charter	Thanks very much I've forwarded the service order to Bob Rice. Please shoot me a countersigned copy when available. Later, Brian

heather.gervais

toTodd.Dalson, bpickett

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- Show quoted text -

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bpickett

toheather.gervais, Todd.Dalson

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Thanks very much

I've forwarded the service order to Bob Rice.

Please shoot me a countersigned copy when available.

Later,

Brian

On Mon, May 2, 2016 at 1:42 PM, Gervais, Heather L <heather.gervais@charter.com> wrote:

Yes, that is correct. All endpoints (Z side) will have those amounts billed in the school name, but all will bill back to the MOISD master bill like they do now.

Thanks,

Heather

From: Dalson, Todd W

Sent: Monday, May 02, 2016 1:27 PM

To: Brian Pickett; Gervais, Heather L

Subject: RE: Agreement

Hi Brian

Adding Heather. H, they will bill just like they currently do correct? With the ISD being billed?

Todd W. Dalson | K12/Library Account Executive-Michigan (o)616.607.2381 (c)

616.558.0586

4670 Fulton Street, Ada, MI 49301

Find out more about Fiber Solutions from Charter Business:

<http://www.charterbusiness.com/fiber-services.aspx?type=large>

From: Brian Pickett [mailto:bpickett@moisd.org]

Sent: Monday, May 02, 2016 12:19 PM

To: Dalson, Todd W

Subject: Re: Agreement

Hi Todd,

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Todd.Dalson

toBPickett

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4670 Fulton Street, Ada, MI 49301

show details print original 2016-04-29 

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Sent: Wednesday, April 27, 2016 12:44 PM

To: Dalson, Todd W

Subject: RE: MOISD WAN

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>>> On 4/27/2016 at 12:16 PM, in message
<fe8404ffad54d198fe745cc180d0586@SC58MEXGP019.CORP.CHARTERCOM.com>,
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Sent: Tuesday, April 26, 2016 3:30 PM

To: Dalson, Todd W

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Attachments—

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 2018, a true and authorized copy of this Ex Parte Submission was served by electronic mail upon the following:

Kris Monteith, Chief
Wireline Competition Bureau
Federal Communications Commission
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Kris.Monteith@fcc.gov

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